



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Fiber Optics Corp.--Claim for Costs
File: B-238235.3
Date: August 28, 1990

Pierre L. LaBarge, Jr., for the protester.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

There is no basis for the award of proposal preparation costs where protester filed an agency-level protest resulting in corrective action, but never filed a protest at the General Accounting Office (GAO), since a prerequisite to the award of costs is a decision by GAO on the merits of a protest.

DECISION

American Fiber Optics Corp. claims its proposal preparation costs incurred in responding to solicitation No. N00406-89-R-0504, issued by the Department of the Navy for the installation and furnishing of certain communications cable.

We deny the claim for proposal preparation costs.

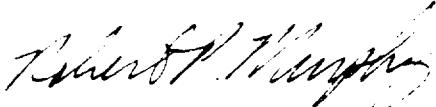
American filed an agency-level protest that resulted in the agency's termination of the protested contract. American, having prevailed in its agency-level protest, now seeks its proposal preparation costs from our Office.

Our authority to award bid and proposal preparation costs is predicated on a determination by this Office that an agency has acted contrary to statute or regulation. 31 U.S.C. § 3554(c)(1) (1988). Thus, a decision on the merits is an

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essential condition to a determination that the protester is entitled to the award of costs. See Maytag Aircraft Corp.--Request for Recon.; Claim for Protest Costs, 69 Comp. Gen. 83 (1989), 89-2 CPD ¶ 457. Since American never protested to our Office there is no decision on the merits. We therefore have no basis for awarding protest costs to American. See Teknion, Inc.--Claim for Protest Costs, 67 Comp. Gen. 607 (1988), 88-2 CPD ¶ 213.

The claim for costs is denied.



for James F. Hinchman
General Counsel